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April 27, 2009

FIRST CLASS MAILHon. Joseph A. Greenaway, Jr.
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101Lauren Emerson
TEL +1 (212) 408-2533
FAX +1 (212) 259-2533
lauren.emerson@bakerbotts.comRe: *Clockwork Homes Services, Inc. et al v. Pascale et al*
2:09-cv-01913-JAG-MCA

Dear Judge Greenaway:

We are counsel to Plaintiffs Clockwork Homes Services, Inc., Plumbers' Success International, Inc. and Clockwork IP, LLC (hereinafter collectively "Plaintiffs" or "Clockwork") in the above referenced matter which was recently transferred from the Eastern District of Missouri to the United States District Court of New Jersey.

Prior to transfer, on March 16, 2009, Clockwork filed a motion to amend the Complaint to add Abra-Cadabra Plumbing, Heating, Sewer & Drain Service, Inc. as a defendant. A copy of the Court's Order of March 24, 2009 granting this Motion is appended hereto as Exhibit A. That same day, Plaintiffs filed a Request for Issuance of Summons so that the Plaintiffs could effect service on the corporate defendant promptly in compliance with the Judge's Order. Only after following up with the Court some weeks later did Plaintiffs learn that the Court required that the Request be amended, at which time Plaintiffs promptly complied. The Request and Amended Request are appended hereto as Exhibits B and C, respectively.

The Court in Missouri transferred the case to the District of New Jersey on April 15, 2009, without first granting Plaintiffs' request for a summons. A copy of the Judge's Order is appended hereto as Exhibit D.

BAKER BOTTS LLP


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April 27, 2009

Plaintiffs therefore respectfully request that your honor grant the pending Request for Issuance of Summons so that Plaintiffs may promptly effect service of process on Abra-Cadabra Plumbing, Heating, Sewer & Drain Service, Inc.

Should the Court require any further information, the undersigned counsel can be available to speak with the Court at its early convenience. Absent such discourse, Plaintiffs looks forward to receiving a summons or further instructions from the Court on how best to proceed.

Respectfully submitted,



Lauren Beth Emerson

L.E.


SO ORDERED

JOSEPH A. GREENAWAY, JR.

U.S.D.J.

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CLOCKWORK HOME SERVICES,
INC. et al.,

Plaintiffs,

vs.

ANGELO PASCALE,

Defendant.

Case No. 4:09CV142 CDP

MEMORANDUM AND ORDER

Plaintiffs have asked for leave to file an amended complaint so that they may add a new defendant. I will grant this motion, and plaintiffs are reminded that they must serve the new corporate defendant according to the Federal Rules.

Defendant Angelo Pascale sent me a letter that I will liberally construe as a motion to dismiss under Fed. R. Civ. P. 12(b)(6) and a motion to transfer venue under 28 U.S.C. § 1404. Plaintiffs filed a memorandum in opposition, but Pascale has not provided any factual or legal support for his requests. Accordingly, I will direct Pascale, acting pro se or through an attorney, to file a brief with the Court in support of his motions. In his brief, Mr. Pascale must set forth specific facts, supported by evidence and appropriate affidavits, showing why he is entitled to

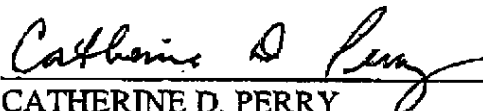
the relief he requests. Plaintiffs may then respond to Pascale's brief within the time set by local rules for responding to motions.

Further, Mr. Pascale cannot respond on behalf of the corporation because he is not a lawyer: an attorney for the newly added corporate defendant must respond for the corporation, once the corporation is properly served.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion to file an amended complaint [#14] is granted. Plaintiffs' First Amended Complaint is deemed filed as of the date of this Order, and plaintiffs are reminded of their obligation to promptly obtain service on the newly added defendant.

IT IS FURTHER ORDERED that defendant Pascale must file a brief with the Court, within fourteen (14) days of this Order, setting out the legal and factual support for his motion to dismiss and motion to change venue.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 24th day of March, 2009.

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURICLOCKWORK HOME SERVICES, INC., ET AL.

)

Case no. 4:09-CV-00142-CDF

V.

)

ANGELO PASCALE, ET AL.

)

March 24, 2009

MEMORANDUM FOR CLERK

Request to the Clerk of the Court for issuance of Summons.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March 2009, a true and correct copy of the foregoing Memorandum for Clerk was served on Defendant Angelo Pascale via express courier postage prepaid as follows:

Mr. Angelo Pascale
25 Pine Street St. #1
Rockaway, NJ 07866

Mr. Angelo Pascale
15 Ponderosa Trail
Sparta, NJ 07871

and via email as follows:

abracadabraplumbing@gmail.com

By:

Lauren Beth EmersonPlease circle which applies: (Pro se) (Attorney for) Plaintiff

(Pro se) (Attorney for) Defendant

Exhibit 1

AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

EASTERN DISTRICT OF MISSOURI

CLOCKWORK HOME SERVICES, INC., PLUMBERS'
SUCCESS INTERNATIONAL, LLC, AND CLOCKWORK IP, LLC,

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER: 4:09-CV-00142-CDP

ANGELO PASCALE and ABRACADABRA
PLUMBING, HEATING, SEWER & DRAIN
CLEANING SERVICE, INC., a/k/a ABRA-
CADABRA PLUMBING, ABRA-CADABRA, or
ABRA-CADABRA PLUMBING AND HEATING SERVICES INC.,

TO: (Name and address of defendant)

AbraCadabra Plumbing, Heating Sewer & Drain
Cleaning Service, Inc. a/k/a Abra-Cadabra Plumbing,
Abra-Cadabra, or Abra-Cadabra Plumbing and Heating
Services, Inc.
25 Pine Street, Suite 1, Rockaway, NJ 07866 or
15 Ponderosa Trail, Sparta, NJ 07871

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Paul J. Reilly
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, NY 10112

an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

| | |
|--|-------|
| Service of the Summons and Complaint was made by met | DATE |
| NAME OF SERVER (PRINT) | TITLE |

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

| | | |
|--------|----------|-------|
| TRAVEL | SERVICES | TOTAL |
|--------|----------|-------|

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

EXHIBIT C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

| | | |
|---------------------------------------|---|-----------------------------------|
| CLOCKWORK HOME SERVICES, INC., ET AL. |) | |
| |) | Case no. <u>4:09-cv-00142-CDP</u> |
| v. |) | |
| ANGELO PASCALE, ET AL. |) | April 14, _____, 20 <u>09</u> |

AMENDED MEMORANDUM FOR CLERK

Request to the Clerk of the Court for issuance of Summons. Please send endorsed Summons by US mail to the undersigned at Baker Botts L.L.P., 30 Rockefeller Plaza, New York, NY 10112.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April 2009, a true and correct copy of the foregoing Amended Memorandum for Clerk was served on Defendant Angelo Pascale via express courier postage prepaid as follows:

Mr. Angelo Pascale
25 Pine Street St. #1
Rockaway, NJ 07866

Mr. Angelo Pascale
15 Ponderosa Trail
Sparta, NJ 07871

and via email as follows:

abracadabraplumbing@gmail.com

By:


Lauren Beth Emerson

Please circle which applies: (Pro se) (Attorney for) Plaintiff

(Pro se) (Attorney for) Defendant

Exhibit A

AD 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

EASTERN DISTRICT OF MISSOURI

CLOCKWORK HOME SERVICES, INC., PLUMBERS' SUCCESS
INTERNATIONAL, LLC, and CLOCKWORK IP, LLC

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER: 04:09-CV-00142 (CDF)

ANGELO PASCALE and ABRACADABRA PLUMBING, HEATING,
SEWER & DRAIN CLEANING SERVICE, INC., a/k/a
ABRA-CADABRA PLUMBING, ABRA-CADABRA, or
ABRA-CADABRA PLUMBING AND HEATING SERVICES, INC.

TO: (Name and address of defendant)

ABRACADABRA PLUMBING, HEATING, SEWER & DRAIN
CLEANING SERVICE, INC., a/k/a ABRA-CADABRA
PLUMBING, ABRA-CADABRA, or ABRA-CADABRA PLUMBING
AND HEATING) SERVICES, INC.
15 Ponderosa Trail
Sparta, New Jersey 07671

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Paul J. Reilly
Baker Botts L.L.P.
30 Rockefeller Plaza
New York, New York 10112

an answer to the complaint which is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons In a Civil Action

| RETURN OF SERVICE | | |
|---|----------|-------|
| Service of the Summons and Complaint was made by met | DATE | |
| NAME OF SERVER (PRINT) | TITLE | |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <div style="margin-bottom: 10px;"><input type="checkbox"/> Served personally upon the defendant. Place where served:</div> <div style="margin-bottom: 10px;"><input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:</div> <div style="margin-bottom: 10px;"><input type="checkbox"/> Returned unexecuted:</div> <div style="margin-bottom: 10px;"><input type="checkbox"/> Other (specify):</div> | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL |
| DECLARATION OF SERVER | | |
| <p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"><div style="width: 45%;">Executed on _____ Date</div><div style="width: 45%;">_____ Signature of Server</div></div> <div style="text-align: center; margin-top: 10px;">_____ Address of Server</div> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION

CLOCKWORK HOME SERVICES,
INC. et al.,

Plaintiffs,

vs.

ANGELO PASCALE, et al.,

Defendants.

Case No. 4:09CV142 CDP

MEMORANDUM AND ORDER

Defendant Angelo Pascale sent a letter to this court on March 9, 2009 asking that I transfer this case to either New York or New Jersey, and that I dismiss him, as an individual, from the case because his company is the proper party. At my direction, the Clerk of Court docketed that as a motion to dismiss or transfer venue. Plaintiffs filed a memorandum opposing the motion. On March 24, 2009, I ordered Pascale to file a brief setting out the legal and factual support for his motions. That order was sent to Pascale at the address provided in his letter, but was returned to the court as undeliverable. Pascale has not informed the court of any change of address, as required by the local rules.

Pascale must have received the order somehow, however, because he sent a second letter to the court, which appears to be a response to the order. The letter did not contain any certificate of service or any other indication that he had served

it on plaintiffs' counsel, as required by Federal Rule of Civil Procedure 5. Further, the letter did not give any factual or legal support for his motion to dismiss or to transfer venue. Nor did it address plaintiffs' claim that Pascale consented to venue in this court when he signed the Member Agreement.

There is no basis for dismissing the suit against Pascale. Indeed, it appears that plaintiffs will easily be able to prove that Pascale treated any corporate entities – if they even exist – as alter egos of himself, although that, of course, is a fact issue not yet ripe for determination.

Plaintiffs have indicated that they would agree to a transfer this case to the United States District Courts for the Southern District of New York or the District of New Jersey, provided that defendants are barred from later challenging venue. Plaintiffs have attempted to contact Pascale to work out a consent motion to transfer, but Pascale has not responded.

While Pascale has not supported his motion to transfer with a brief, as I requested, I find that transfer of the case to the District of New Jersey is in the interests of justice, because that will be more convenient for the parties and witnesses. *See* 28 U.S.C. § 1404(a). This is especially so here, because it appears that Pascale may end up representing himself, since he claims he has been unable to hire counsel. As my previous orders explained, he cannot represent the corporations, but if he is representing himself he will need to appear at court

scheduling conferences and hearings. Plaintiffs' counsel are located in New York, and any judgment would have to be collected in New Jersey.

I will therefore transfer this case to the United States District Court for the District of New Jersey, but I will order that defendants comply with the conditions set by plaintiffs, specifically, following transfer, defendants may not move to (1) change venue; (2) dismiss for improper venue; or (3) foreclose plaintiffs from asserting claims against them on the grounds that the Member Agreement requires that the action be brought in Missouri. If defendants fail to comply with these conditions, plaintiffs could file a motion to transfer the case back here, and by this Order I urge the District of New Jersey to grant such a motion. My hope, of course, is that Pascale, having gotten what he asked for, will not allow the corporate defendants to breach the conditions set out above.

Pascale is reminded of his obligation to follow the Federal Rules of Civil Procedure, and is specifically reminded that he has a duty to keep the court apprised of his current address, and to serve plaintiffs' counsel with a copy of anything he provides to the court. Pascale is advised that any further failure to comply with these rules may result in the imposition of sanctions.

Accordingly,

IT IS HEREBY ORDERED that defendant Pascale's motion to dismiss [#12] is denied and his motion to transfer [#12] is granted.

IT IS FURTHER ORDERED that the Clerk of Court shall transfer this case to the United States District Court for the District of New Jersey.

IT IS FURTHER ORDERED that defendants are hereafter prohibited from (1) moving to change venue; (2) moving to dismiss for improper venue; or (3) seeking to foreclose plaintiffs from asserting claims against them on the grounds that the Member Agreement requires that the action be brought in Missouri.

IT IS FURTHER ORDERED that the Clerk of Court shall serve this Order on Pascale by mailing it to him at each of the addresses shown on his various filings.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 15th day of April, 2009.